

Bureau of Indian Affairs, Interior

§ 224.114

(c) Request that the Secretary take whatever action is necessary to bring a tribe into compliance with the TERA.

§ 224.110 What must a petition to the Secretary contain?

A petition must contain:

(a) The petitioner's name and contact information;

(b) Specific facts demonstrating that the interested party under § 224.101, including identification of the affected interest;

(c) Specific facts demonstrating that the petitioner exhausted tribal remedies, if tribal laws, regulations, or procedures permitted the petitioner to allege tribal noncompliance with a TERA;

(d) A description of facts supporting the petitioner's allegation of the tribe's noncompliance with a TERA;

(e) A description of the adverse environmental impact that the petitioner's interest has sustained or will sustain because of the tribe's alleged noncompliance with the TERA;

(f) A copy of any written decision the tribe issued responding to the petitioner's claims;

(g) If applicable, a statement that the tribe has issued no written decision within a reasonable time related to a claim a petitioner has filed with the tribe under applicable tribal laws, regulations, or procedures;

(h) If applicable, a statement and supporting documentation that the tribe did not respond to the petitioner's request under § 224.105(a) for copies of any tribal laws, regulations, or procedures allowing the petitioner to allege that the tribe is not complying with a TERA; and

(i) Any other information relevant to the petition.

§ 224.111 When may a petitioner file a petition with the Secretary?

(a) A petitioner may file a petition with the Secretary:

(1) By delivering the petition to the Director within 30 days of receiving the tribe's final written decision addressing the allegation of noncompliance under applicable tribal laws, regulations, or procedures;

(2) Within a reasonable period following the tribe's constructive denial

of the petition under § 224.106(c), and the Secretary will determine if the petition is timely in light of the applicable facts and circumstances; or

(3) The tribe did not respond to the petitioner's request for copies of any tribal laws, regulations, or procedures under § 224.105(a).

(b) A petitioner may file a petition directly with the Secretary if the tribe has no tribal laws, regulations or procedures that provide the petitioner an opportunity to allege tribal noncompliance with a TERA.

§ 224.112 What must the Director do upon receipt of a petition?

Within 20 days after receiving a petition, the Director must:

(a) Notify the tribe in writing that the Director has received a petition;

(b) Provide a copy of the complete petition to the tribe;

(c) Initiate a petition consultation with the tribe that will address the petitioner's allegation of a tribe's noncompliance with a TERA and alternatives to resolve any noncompliance; and

(d) Notify the tribe in writing by certified mail, return receipt requested, when the petition consultation is complete.

§ 224.113 What must the tribe do after it completes petition consultation with the Director?

(a) Within 45 days of receiving the Director's notice that the petition consultation is complete, the tribe must respond to any claim made in the petition by submitting a written response to the Director; and

(b) Within a reasonable time after 45 days following the completion of the petition consultation process, the tribe must cure or otherwise resolve each claim of noncompliance made in the petition.

§ 224.114 How may the tribe address a petition in its written response?

In addition to responding to the petitioner's claims, the tribe may also:

(a) Include its interpretation of relevant provisions of the TERA and other legal requirements;

(b) Discuss whether the petitioner is an interested party;

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(c) State whether the petitioner has exhausted tribal remedies, and if so, how; and

(d) Propose to cure or otherwise resolve the claims within the time frame in § 224.113(b).

§ 224.115 When in the petition process must the Director investigate a tribe's compliance with a TERA?

The Director must investigate the petitioner's claims of the tribe's non-compliance with a TERA only after making a threshold determination that:

(a) The tribe has denied or failed to respond to each claim made in the petition within the period under § 224.113(a); or

(b) The tribe has failed, refused, or was unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Director, after the expiration of the period in § 224.113(b).

§ 224.116 What is the time period in which the Director must investigate a tribe's compliance with a TERA?

(a) If the Director determines under § 224.115 that one of the threshold determinations in § 224.114 has been met, then within 120 days of the Director's receipt of a petition, the Director must determine whether or not a tribe is in compliance with the TERA;

(b) The Director may extend the time for determining a tribe's compliance with a TERA up to 120 days in any case in which the Director determines that additional time is necessary to evaluate the claims in the petition and the tribe's written response, if any. If the Director decides to extend the time, the Director must notify the petitioner and the tribe in writing of the extension.

§ 224.117 Must the Director make a determination of the tribe's compliance with a TERA?

(a) Yes. Upon a finding that one of the threshold determinations in § 224.115 has been met, the Director must make a determination of the tribe's compliance with a TERA within the time period in § 224.116.

(b) If the Director determines that the tribe is in compliance with the

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TERA, the Director will notify the tribe and the petitioner in writing;

(c) If the Director determines that the tribe is not in compliance with the TERA, the Director will notify the tribe and the petitioner in writing and, in addition, must provide the tribe:

(1) A written determination that describes the manner in which the TERA has been violated together with a written notice of the violations;

(2) Notice of a reasonable opportunity to comply with the TERA; and

(3) Notice of the tribe's opportunity for a hearing.

§ 224.118 How must the tribe respond to the Director's notice of the opportunity for a hearing?

The tribe must respond in writing to the Director's notice of the opportunity for a hearing within 20 days of receipt of the notice by requesting a hearing or declining to request a hearing. If the tribe does not respond within the time period, the Director will proceed with making a decision without further input from the tribe.

§ 224.119 What must the Director do when making a decision on a petition?

(a) The Director must issue a written decision to the tribe and the petitioner stating the basis for the decision about the tribe's compliance or noncompliance with the TERA within 30 days following:

(1) A hearing, if the tribe requested a hearing;

(2) The tribe's declining the opportunity for a hearing; or

(3) The tribe's failure to respond to the opportunity for a hearing within 20 days of the Director's written notice of the opportunity for a hearing.

(b) If the Director decides that the tribe is not in compliance with the TERA, the Director must:

(1) Include findings of fact and conclusions of law with the written decision to the tribe; and

(2) Take action to ensure compliance with the TERA.

§ 224.120 What action may the Director take to ensure compliance with a TERA?

If the Director decides that a tribe is not in compliance with a TERA, the